

**Michigan Senate Insurance Committee Hearing
June 12, 2012 at 10:30 a.m.
Boji Building, 1st Floor
124 W. Allegan, Lansing, MI 48933**

SB 1115, 1116, 1117, 1118

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I am here today to speak in opposition to SB 1110, 1115, 1116, 1117 and 1118. Doctors tell their patients "An ounce of prevention is worth a pound of cure." Last year approximately 66,000 Michigan families were devastated by medical errors. One in three patients are affected by preventable medical errors and over half of doctors admit to not reporting serious medical errors.

If I want to hire someone to work on my property, I can call the Better Business Bureau and check their record, yet I cannot check the record of the physician who is about to perform surgery on myself or a loved one. The National Practitioner Data Bank, which is the repository for such information, is not open to the public.

6% of doctors commit 62% of the medical malpractice. The obvious "cure" for the patient safety crisis is legislation making it easier to revoke the licenses of the 6% of doctors who commit more than their statistical share of malpractice. Yet rather than revoking bad doctors' licenses, supporters of these bills seek to further immunize the minority of doctors who cause the majority of preventable medical errors.

I represent hundreds of Detroit area children whose parents allege they were wrongfully diagnosed with epilepsy by pediatric neurologist, Dr. Yasser Awaad. Most of my clients were referred to Dr. Awaad by their pediatricians due to headaches, developmental delays and behavioral problems. Dr. Awaad ordered an EEG (brain testing). He then told the parents the EEG revealed seizure activity when in fact the EEG's revealed no seizure activity. If the parents balked at medicating their child, they say Dr. Awaad threatened to report them to child protective services for neglect.

Dr. Awaad prescribed strong anti-seizure medications, which caused severe side effects such as attention and mood disorders, extreme weight gain and weight loss, allergic reactions and abnormal liver function studies. Dr. Awaad even prescribed surgical implants (vagal nerve stimulators) for some children. After they were diagnosed with epilepsy, many of the children were placed in special education. They were kept from participating in most normal childhood activities such as swimming, biking and organized sports. Teens could not get their driver's license.

None of these parents knew Dr. Awaad had signed a lucrative incentive contract which made him eligible to earn a bonus comprised of 50% of the net collected billings generated by his practice. In 2000, Dr. Awaad's Medicaid total was \$41,908.93. The first year of his incentive contract, Dr. Awaad's Medicaid total skyrocketed to \$144,505.05. In 2001, Dr. Awaad ordered almost four times as many EEG's as he had the prior year on Medicaid patients alone. In 2005, Dr. Awaad was paid over \$600,000.00.

The physician practicing in the same office with Dr. Awaad noticed he was misdiagnosing epilepsy in some of her patients. She reported it to Dr. Awaad's employer but the employer did not fire him. A pediatric neurologist evaluated a number of Dr. Awaad's former patients and determined he was misdiagnosing children. He reported Dr. Awaad to the Michigan Department of Community Health. Despite an opinion from its own expert stating Dr. Awaad had misdiagnosed the children, the department closed the investigation without filing an administrative complaint against Dr. Awaad.

In March of 2007, Dr. Awaad's office closed abruptly. Some patients received a letter advising them Dr. Awaad was leaving while others arrived for their appointments only to find the office closed. Parents began following up with other pediatric neurologists. The new doctors ordered their own EEG's which were normal and weaned the children off the medication. The parents left believing Dr. Awaad's treatment had worked or that their child had simply outgrown the condition. This was not the case with one woman, however. She had five children diagnosed with seizures by Dr. Awaad. When she took them for follow-up with other neurologists, she was shocked to learn none of them had epilepsy.

It was not until July of 2010 that the MDOCH filed an administrative complaint against Dr. Awaad. Despite having 39 Affidavits of merit signed by another board certified pediatric neurologist, the state only went forward with 4 claims and closed the rest. The parents were shocked when the state entered a consent order with Dr. Awaad which only fined him \$10,000.00, placed him on probation and required him to complete minimal continuing education.

Upon information and belief, Dr. Awaad has an interest in an Oakland county urgent care and may be practicing Medicine here in Michigan as I read this. Dr. Awaad's employer failed to stop Dr. Awaad. Medicaid failed to stop Dr. Awaad. The Michigan Department of Community Health failed to stop Dr. Awaad. The tort system is the only recourse my clients have.

After we filed our lawsuit, Dr. Awaad was interviewed by WDIV's Karen Drew. In that interview, he denied misdiagnosing any children. He said "I have done everything within my power to serve the children and to be careful to diagnose them and monitor them the proper way."

SB 1116 does not require that the physician's actions be reasonable or within the standard of care, it only requires that the doctor subjectively believe their conduct was both well founded in medicine and in the best interests of the patient. SB1116 does not say the trier of fact must believe the doctor's conduct was both well founded in medicine and in the best interest of the patient.

Doctors may be highly educated, but they are still human. When another doctor practicing in the same specialty signs an affidavit stating the defendant doctor's conduct did not comply with the standard of care resulting in injury to a patient, the injured patient should be able entitled to exercise their Constitutional right to a jury trial if they wish to do so.

These bills are not an ounce of prevention intended to prevent a pound of preventable medical errors. They do nothing to promote patient safety. These bills are a euthanasia package intended to ensure the injured patient's rights' are dead on arrival at the court house steps.